

TRANSLATION

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference P803756/WO/1	FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. PCT/EP2004/009755	International filing date (<i>day/month/year</i>) 02.09.2004	Priority date (<i>day/month/year</i>) 26.09.2003
International Patent Classification (IPC) or national classification and IPC B60K28/02		
Applicant DAIMLERCHRYSLER AG		

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of <u>6</u> sheets, including this cover sheet.
3. This report is also accompanied by ANNEXES, comprising: a. <input type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of _____ sheets, as follows: <input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).
4. This report contains indications relating to the following items: <input checked="" type="checkbox"/> Box No. I Basis of the report <input type="checkbox"/> Box No. II Priority <input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability <input type="checkbox"/> Box No. IV Lack of unity of invention <input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement <input type="checkbox"/> Box No. VI Certain documents cited <input type="checkbox"/> Box No. VII Certain defects in the international application <input type="checkbox"/> Box No. VIII Certain observations on the international application

Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

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Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language _____, which is the language of a translation furnished for the purposes of:
- ☐ international search (Rule 12.3 and 23.1(b))
- ☐ publication of the international application (Rule 12.4)
- ☐ international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the **elements** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:
- ☐ the international application as originally filed/furnished
- ☒ the description:
- pages 1-11 as originally filed/furnished
- pages* _____ received by this Authority on _____
- pages* _____ received by this Authority on _____
- ☒ the claims:
- nos. 1-11 as originally filed/furnished
- nos.* _____ as amended (together with any statement) under Article 19
- nos.* _____ received by this Authority on _____
- nos.* _____ received by this Authority on _____
- ☒ the drawings:
- sheets 1/2-2/2 as originally filed/furnished
- sheets* _____ received by this Authority on _____
- sheets* _____ received by this Authority on _____
- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1. Statement			
Novelty (N)	Claims	2, 3, 4, 5, 8, 9, 10	YES
	Claims	1, 6, 7, 11	NO
Inventive step (IS)	Claims	3, 5, 9	YES
	Claims	1, 2, 4, 6, 7, 8, 10, 11	NO
Industrial applicability (IA)	Claims	1-11	YES
	Claims		NO
2. Citations and explanations (Rule 70.7)			
1	<p>This report makes reference to the following documents:</p> <p>D1: US-B2-6 543 567 (DELUCA JOAN ET AL) 8 April 2003 (2003-04-08)</p> <p>D2: US-A-5 411 452 (KATAYAMA KAZUYORI) 2 May 1995 (1995-05-02)</p>		
2	<p>The current independent claims 1 and 11 are unclear. The last clause in each of those claims cannot be unambiguously interpreted. The term "furthermore" may have two meanings. Firstly, that the idle condition is firstly a function of only the first actuating variable and then of only the second actuating variable, and secondly that the idle condition is made a function of the first and the second actuating variables. The subsequent examination of patentability is based on the second interpretation, in the sense of "additionally", that is that both variables are used to determine the idle condition (see figure 1 and page 6, last paragraph - page 7, first paragraph of the description).</p>		

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2	<p data-bbox="406 399 779 430">INDEPENDENT CLAIM 1</p> <p data-bbox="406 493 1266 682">2.1 The present application does not meet the requirements of PCT Article 33(1) because the subject matter of claim 1 lacks novelty (PCT Article 33(2)).</p> <p data-bbox="406 745 1380 1176">Claim 1 concerns: a method for preventing unintentional acceleration of a vehicle, in which an actuating variable is determined that describes actuation of a driving operation element provided for influencing vehicle drive means, and in which the vehicle remains without acceleration when an idle condition that is dependent on the determined first actuating variable is satisfied.</p> <p data-bbox="406 1239 1380 1669">D1 shows (according to column 1, lines 19-22) a method for preventing unintentional acceleration of a vehicle when the foot slips from the brake pedal to the accelerator pedal. Actuation of the accelerator pedal is also measured and it can be implicitly assumed that a vehicle remains without acceleration when the accelerator pedal is not actuated, that is when an idle condition is satisfied.</p> <p data-bbox="406 1732 1380 1921">Claim 1 also indicates that: in addition to the first actuating variable, a second actuating variable is determined which describes actuation of a braking operation element</p>

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	<p>provided for influencing vehicle braking means, the idle condition also being a function of the determined second actuating variable.</p> <p>In this regard, D1 shows in figure 3 an algorithm which includes a brake actuation query and on the basis thereof remains in the stop mode or is brought into the stop mode, an idle condition thus being satisfied as a function of brake actuation.</p> <p>2.2 It is also pointed out that interpretation of the term "furthermore" to mean as a function of only the "second actuating variable" (see point one above) would also result in the application lacking inventive step in relation to D1.</p> <p>With such an interpretation, D2 discloses a method according to claim 1 in the passages indicated in the search report, more particularly in column 2, lines 50-65. A claim 1 thus interpreted would therefore not satisfy PCT Article 33(1) because it would lack novelty (PCT Article 33(2)).</p> <p>3 INDEPENDENT CLAIM 11</p> <p>3.1 The present application does not meet the requirements of PCT Article 33(1) because the subject matter of claim 11 lacks novelty (PCT Article 33(2)).</p> <p>Independent claim 11 is the device claim corresponding to method claim 1 and therefore the</p>

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	<p>reasoning put forward under points 2.1 and 2.2 above also applies to claim 11.</p>
4	<p>DEPENDENT CLAIMS 2, 4, 6-8, 10</p> <p>Claims 2, 4, 6-8 and 10 do not contain any features which, in combination with the features of any claim to which they refer, meet the PCT requirements for novelty and inventive step.</p>
5	<p>DEPENDENT CLAIMS 3 and 5</p> <p>The features of dependent claims 3 and 5 appear in combination with the features of those claims to which they refer to meet the PCT requirements.</p>